Supreme Court, U.S.
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No. 98-1651

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1998

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ROBERT C. KIM,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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# PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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# REPLY TO BRIEF IN OPPOSITION

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## REPLY TO BRIEF IN OPPOSITION

Although respondent claims that the issue presented is "fact-bound" and lacks merit, respondent concedes that a criminal sentence based on a defendant's status as a naturalized citizen is constitutionally impermissible. Respondent also agrees that such a constitutional violation in petitioner's sentencing is appealable. Accordingly, the legal basis for this petition is undisputed.

Citing some of the same cases cited by petitioner, respondent concedes the core issue of petitioner's argument: that a criminal sentence based on defendant's status as a naturalized citizen is barred both by the Fifth Amendment and by the Sentencing Guidelines themselves. *See* Brief for the United States in Opposition ("Opp. Brief") 5. However, respondent's description of the issue presented merely parrots the holding of the Court of Appeals, *i.e.* that the basis for petitioner's sentence was not his status as a naturalized citizen, but rather the fact that he breached his oath of allegiance as a naturalized citizen. *See* Opp. Brief 5 (citing the opinion of the Court of Appeals at the Appendix to the Petition ("Pet. App.") 34a). Thus, respondent attempts to cast the controversy as a mere factual dispute not worthy of this Court's review.

To the contrary, the district court's statements are perfectly clear, and there is no factual dispute that petitioner's sentence was based, at least in part, on the violation of his oath of allegiance – an oath that only naturalized citizens are required to take. Accordingly, petitioner's sentence was based on his status as a naturalized citizen. The issue is not one of fact, but whether such a conceded constitutional violation merits this Court's review.

As explained in the Petition, the purported distinction between the citizenship oath and status as a naturalized citizen overlooks the fact that every naturalized citizen takes the same oath to uphold the laws of the United States. As a consequence, any naturalized citizen convicted of violating a law of the United States could be sentenced more harshly for breaking this oath. The net effect of the Court of Appeal's opinion is to affirm sentencing naturalized citizens based on their status, in clear violation of the constitutional principles conceded by respondent in its brief.

Rather than a fact-bound question, the decision of the Court of Appeals raises an important issue of constitutional law regarding the rights of naturalized citizens sentenced under the criminal laws of the United States. Left unexamined, the decision of the Court of Appeals threatens the basic equality of naturalized citizens under law protected by the Constitution and affirmed time and again by decisions of this Court. That question, therefore, clearly warrants this Court's review.

## CONCLUSION

For the foregoing reasons, the petition be granted.

Respectfully submitted,

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